

FILED

OCT 20 2008

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**Clerk, U.S. District and
Bankruptcy Courts**

UTAHAMERICAN ENERGY, INC.
794 N 'C' Canyon Road
East Carbon, Utah 84520
(435) 888-4016,

Plaintiff,

v.

U.S. DEPARTMENT OF LABOR
200 Constitution Avenue N.W.
Washington, D.C. 20210
(866) 487-2365,

Defendant.

Case: 1:08-cv-01791
Assigned To : Leon, Richard J.
Assign. Date : 10/20/2008
Description: FOIA/Privacy Act

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Introduction

1. Plaintiff UtahAmerican Energy, Inc. ("UEI") brings this action seeking declaratory and injunctive relief against Defendant U.S. Department of Labor ("DOL") for its failure to comply with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In support of this complaint, UEI alleges as follows:

Parties

2. Plaintiff UEI is a corporation organized under the laws of the State of Utah. UEI is the parent corporation of Andalex Resources, Inc., which in turn is the parent corporation of Genwal Resources, Inc. Genwal Resources, Inc. is the operator of the Crandall Canyon Mine, an underground coal mine in Huntington, Utah.

3. Defendant DOL is a department within the Executive Branch of the U.S. government, with headquarters located at 200 Constitution Avenue N.W., Washington, D.C. DOL is an agency of the United States within the meaning of 5 U.S.C. § 552(f)(1).

Jurisdiction and Venue

4. The Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.

5. Venue is appropriate in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

Factual Allegations

6. The Mine Safety and Health Administration (“MSHA”) is an agency of the U.S. Department of Labor. MSHA is the federal agency with regulatory jurisdiction over occupational safety and health at mines in the U.S. Among their duties, MSHA officials conduct mine inspections, enforce safety and health regulations, review and approve plans for underground coal mines, and oversee rescue and recovery operations in the event of a mine accident.

7. On August 6, 2007, a part of the Crandall Canyon mine collapsed, killing six miners. Ten days later, on August 16, 2007, during rescue and recovery operations, a second accident occurred, causing the deaths of three rescuers.

8. MSHA officials had reviewed and approved mining plans for the Crandall Canyon mine prior to the August 6 and 16, 2007 accidents, and they co-directed the rescue and recovery at the mine after the accidents.

9. At the request of Secretary of Labor Elaine L. Chao, an Independent Review Team (“IRT”), led by Earnest C. Teaster, Jr. and Joseph W. Pavlovich, was appointed to evaluate the manner in which MSHA carried out its regulatory responsibilities and enforcement procedures at the Crandall Canyon Mine before the two accidents, and the manner in which agency personnel conducted rescue and recovery operations after the accidents.

10. In connection with its review, the IRT conducted numerous interviews and reviewed numerous documents.

11. The IRT prepared a report of its findings. Citing the information the IRT had obtained through interviews and by reviewing documents, the report was critical of MSHA’s performance before and after the accidents in a number of respects. The report was dated July 21, 2008.

12. By letter dated August 14, 2008, to DOL’s Office of the Solicitor (pursuant to 29 C.F.R. § 70.19(b)(2)), UEI through counsel requested that DOL produce certain IRT-related documents pursuant to FOIA. Specifically, UEI requested that DOL produce transcripts of each and every interview conducted by the IRT, including:

- transcripts of the interviews of each and every individual listed in Appendix A (“List of Persons Interviewed”) to the report entitled “Independent Review of MSHA’s Actions at Crandall Canyon Mine” dated July 21, 2008;
- transcripts of interviews of each and every individual interviewed by the IRT who worked at the Crandall Canyon Mine between January 1, 1995 and July 21, 2008; and
- transcripts of interviews of each and every individual interviewed by the IRT who was a family member of any of the men fatally injured in either of the accidents that occurred at the Crandall Canyon Mine on August 6, 2007 and August 16, 2007.

DOL received the August 14, 2008 FOIA request on August 19, 2008. A copy of UEI's August 14, 2008 FOIA request and the receipt for its delivery to DOL are attached hereto as Exhibit A.

13. FOIA requires that an agency shall "determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of [a FOIA] request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination." 5 U.S.C. § 552(a)(6)(A)(i).

14. DOL has never acknowledged receiving UEI's August 14, 2008 FOIA request, nor has it ever produced any documents in response thereto.

15. By letter dated August 18, 2008, to DOL's Office of the Solicitor (pursuant to 29 C.F.R. § 70.19(b)(2)), UEI through counsel supplemented its August 14 request with a further request that DOL produce additional documents pursuant to FOIA. Specifically, UEI requested that DOL produce "copies of all documents, records, and exhibits referenced in the report entitled 'Independent Review of MSHA's Actions at Crandall Canyon Mine,' dated July 21, 2008" and "copies of all documents upon which the IRT relied for its factual findings." DOL received the August 18, 2008 FOIA request on August 22, 2008. A copy of UEI's August 18, 2008 FOIA request and the receipt for its delivery to DOL are attached hereto as Exhibit B.

16. DOL has never acknowledged receiving UEI's August 18, 2008 supplemental FOIA request, nor has it ever produced any documents in response thereto.

17. Although pursuant to 5 U.S.C. § 552(a)(6)(A)(i) DOL was required to respond to the initial FOIA request within twenty business days of its receipt of UEI's August 14, 2008 request, DOL failed to do so by that deadline and to date, has not done so.

18. Although pursuant to 5 U.S.C. § 552(a)(6)(A)(i) DOL was required to respond to the supplemental FOIA request within twenty business days of its receipt of UEI's August 18, 2008 request, DOL failed to do so by that deadline and to date, has not done so.

19. Because the Defendant has failed to comply with the time limits set forth in 5 U.S.C. § 552(a)(6)(A), UEI is deemed to have exhausted its administrative remedies and is entitled to seek immediate judicial review pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

20. DOL's failure to meet the statutory deadline for responding to UEI's requests, its failure even to notify UEI that it had received the requests, and its ongoing failure to produce any documents responsive to those requests constitute arbitrary and capricious, and unlawful actions by DOL to deny UEI access to material to which it is entitled by law.

CLAIMS FOR RELIEF

COUNT I

Declaratory Judgment

Failure to Produce Records

5 U.S.C. 552(a)(3); 28 U.S.C. §§ 2201 and 2202

21. UEI hereby re-alleges and incorporates paragraphs 1 through 20 of this Complaint as if fully set forth herein.

22. FOIA requires that, upon proper request for disclosure of records, an agency "shall make the records promptly available to any person." 5 U.S.C. § 552(a)(3).

23. The documents referenced in Paragraphs 12 and 15, above, are agency records within DOL's control. UEI, through counsel, properly requested production of the said documents. UEI is entitled by law to obtain copies of the said documents. DOL has failed to produce the documents in violation of FOIA.

24. UEI requests a declaratory judgment that DOL has violated FOIA and that UEI is entitled to receive the documents referenced in paragraphs 12 and 15, above, immediately.

COUNT II
Declaratory Judgment
Arbitrary and Capricious Withholding of Records
5 U.S.C. § 552(a)(4)(F); 28 U.S.C. §§ 2201 and 2202

25. UEI hereby re-alleges and incorporates paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. FOIA provides that “[w]henver the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. . . .” 5 U.S.C. § 552(a)(4)(F).

27. DOL’s failure to produce the documents referenced in Paragraphs 12 and 15, above, its failure to notify UEI that it has received the requests, and its ongoing failure to produce the documents responsive to those requests constitute an arbitrary, capricious, and unlawful pattern and practice by DOL to deny UEI access to material to which it is entitled by law.

28. UEI requests a declaratory judgment that DOL personnel acted arbitrarily and capriciously in DOL’s processing of UEI’s FOIA requests.

COUNT III
Injunctive Relief for Failure to Produce Records Under FOIA
5 U.S.C. §§ 552(a)(3)(A) and 552(a)(4)(B)

29. UEI hereby re-alleges and incorporates paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. FOIA provides this Court with “jurisdiction to enjoin [DOL] from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” 5 U.S.C. § 552(a)(4)(B).

31. The requested documents are agency records within DOL’s control. UEI, through counsel, properly requested production of the documents referenced in paragraphs 12 and 15, above. UEI is entitled by law to obtain copies of the said documents. DOL has failed to produce the documents, in violation of 5 U.S.C. § 552(a)(3)(A).

32. UEI requests that, pursuant to 5 U.S.C. § 552(a)(4)(B), the Court enjoin DOL from withholding the documents referenced in paragraphs 12 and 15, above, and that it order DOL immediately to produce the said documents to UEI.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff UEI respectfully prays that this Court:

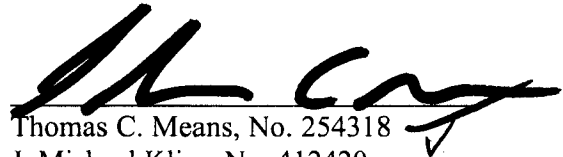
1. Declare that UEI is entitled to receive copies of the documents requested in the FOIA requests dated August 14, 2008 and August 18, 2008; that DOL violated FOIA by failing to acknowledge receiving the said FOIA requests within the time limits established by FOIA; that DOL violated FOIA by failing to produce the requested documents; and that DOL personnel acted arbitrarily and capriciously with respect to withholding of the said documents;

2. Order DOL to cease withholding from UEI the documents requested in the FOIA requests dated August 14, 2008 and August 18, 2008, and to produce the said documents to UEI immediately;

3. Award reasonable attorneys' fees and other litigation costs pursuant to 5 U.S.C. § 552(a)(4)(E); and

4. Grant UEI such other and further relief as the Court may deem just and proper.

Respectfully submitted,



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Dated: October 20, 2008